Olga Cárdenas de Ojeda, Toxicomanía y Narcotráfico (Drug Addiction & Drug Traffic), (1974)

pages 71-94

Any judicial sanction is a result of a social reaction against a mode of conduct it does not approve of. Our legal system in this vein is very precise: the basic end of the sanction is to rehabilitate the law breaker and to restore him to society. A secondary purpose, and no less important, is to set up the application of the penalty as an example to dissuade others from committing similar acts.

This principle led our Constitution to ban "the penalties of mutilation, torture of any kind, excessive fines, the confiscation of property and other unwarranted and transcendental penalties (Article 22 of the Constitution). This same point of view has led us to abolish the death penalty in our criminal codes. Only one State retains it, ~~that of~~ Sonora, and it is inapplicable to federal crimes.

It is obvious, on the other hand, that the penalties would not achieve their desired end if they were applied in an arbitrary manner. In order to prevent this, one would have to describe in a very detailed fashion the type conduct which is prohibited. From here we derive the "typicity" of our crimes. This requires a verdict after a legal proceeding to the effect that the conduct of the accused matched that which the type of crime prohibited. The similarity between the outlawed conduct and that of the accused determines the applicability of the sanction.

Before going on to examine the characteristics of the criminal procedure involved, we will briefly analyze the military jurisdiction (also tribunals, proceedings), the only case in which crimes against health do not fall under the normal (regular) jurisdiction.

5.2 General Characteristics of the Drug Trade (Traffic)

The need to detail the conduct which is prohibited has led our legislators to include, in addition to a long list of products, a similarly lengthy list of prohibited acts whose commission is subject to punishment, because they involve prohibited drugs, because the conditions under which they can be legally handled have been disregarded.

There are several provisions of our laws which follow this approach (see especially Articles 290 and 319 of the Sanitary (Health) Code and 194 and Parts I, II and IV of Article 195 of the Penal Code. We have grouped under the rubric of "drug traffic" all of those referred to in these laws, since to list all of them individually each time would prove cumbersome. We therefore refer to "drug traffic", a term which does not appear prominently in our legal system, as the carrying out of such conduct related to drugs, which our national legal system prohibits, be it via international treaties entered into by our country or through the penal and sanitary (health) codes.

___ = I don't thinks we have any translation thus far

When we exclude those items which are duplicated in the aforementioned laws, we find that with respect to stupefying drugs and psychotrophic (mind expanding) substances or the plants which produce them, the following acts are banned: to process, acquire, store, trade, purchase, consume, harvest, grow, manufacture, employ, transfer, export, make, import, possess, prepare, prescribe (in a medical sense), plant, furnish, traffic, transpport, use, sell and even to assist, induce, or exhort others to perform any of the aforementioned acts.

We shall therefore use the words "drug traffic", "traffic" and "handling" to cover any of these acts, obviously as long as they are done in an illegal manner.

This definition allows us to state that in our legal system there is drug trafficking when:

I. ~~If one~~ a person traffics with stupefying drugs or psychotrophic (mind expanding) substances which are prohibited (See Articles 293, 322 and 502 of the Sanitary (Health) Code and 195 of the Penal Code, and

II. If ~~the~~ conditions governing the handling of substances or medicines whose use is only conditionally approved, are not met are not met (Articles 503 of the Sanitary (Health) Code, and Part I, Article 195 of the Penal Code).

Therefore, there is drug traffic when one grows or trades in marihuana, its resins and preparations (Articles 194 and Part II of Article 195 of the Penal Code); when trafficking in opium and its derivatives (Part III of Article 195 of the Penal Code), or when one manages a opium or smoking den, or where other substances are smoked (Article 199 of the Penal Code). The same infraction occurs when one tries to bring into the country, or without the necessary permits or outside the customs system, merchandise ~~in~~ banned or restricted in international trade (Article 197 of the Penal Code), and even selling medicine without a prescription when the latter must be kept at the drug store (Articles 503 and 311 of the Sanitary (Health) Code.

The typical penalty for trafficking in drugs is from three to twelve years, a fine raning from two thousand to twenty thousand pesos (Article 195 of the Penal Code) and as we have already seen, forfeiture of the substances, instruments and vehicles used in the commission of the crime (Article 199 of the Penal Code and Article 445 of the Sanitary (Health) Code.)

2,000 = $500
20,000 = $5,000

as of 10/1/9- exchange rate was $395 = $1 US

This principle knows some exceptions, and according to the variables the penalties may vary. We should point out that the penalty is normally increased when the crime is committed by druggists, apothecaries or pharmacists (Article 196 of the Penal

Code). This also happens when the law breaker is a public official (Article 197 of the Penal Code). The penalties similarly increase when the a minor under sixteen years of age is induced (led) to commit a crime against health (Article 195, paragraph 5, and Article 201, parapgraphs 2 and 3 of the Penal Code), or when the person is a foreigner, who has violated the conditions which allows him to stay in the country (Article 101 of the General Population Law).

In these cases, the deprivation of liberty range between 4 and 15 years, without affecting any other sanction which may be simulatenously imposed, such as the shutting down of establishments or preventing persons from practicing their trade or profession (Parts II and III of Article 196 of the Penal Code).

It should also be pointed out that the type of penal sanctions imposed do not allow the for a conditional suspension of the sentence, unless the sentence is short. Conditional sentencing is in order for those sentenced to short prison terms, so that given their non-dangerous nature, they will not be spiritually contaminated in jail. Article 90 of the Penal Code indicates that conditional sentencing is available when the contemplated sentence does not exceed two years in prison (Part I), when the person sentenced is not a repeat offender (Part II) and when given his personal antecedents, he is unlikely to break the law again (Part III).

The majority of crimes involving drug traffic are punished with sentences greater than two years in prison. Our criminal laws, lists only one case in which the sentence can be conditionally suspended: possession oif cannabis plants (Article 194, 1st. paragraph).

When analyizing the crimes listed in the Sanitary (Health) Code, it is understood that precisely the opposite alternative exists: the conditional suspension of the penalty is always possible, since all involve minimal penalties of less than two years in prison (Articles 502, 503, 505, 507 and 508).

Before examining the crimes and punishment which our laws provide, it should be pointed out that they do not apply to minors below the age of 18 (See Article 119 of Penal Code).

It should be pointed out also that the Treasury Code of the Federation of December 29, 1966 (Diario Oficial of January 19, 1967), also lists certain crimes related to stupefying drugs and psychotrophic susbtances involving contraband (See Part II, Article 46 and Articles 47, 54 and 59 of that law). This was also covered in an express manner in the Penal Code (Article 197), which gave rise to some problems, since some federal judges and courts considered these cases to be governed by the Treasury Code, while others invoked the Penal Code.

The National Attorney General's Office and the Federal Public Ministry (Dept. of Justice) supported in a systematic way the second hypothesis. Several months ago, the Supreme Court (see Semanario Judicial de la Federación, January 31, 1974) upheld this second interpretation and determined that the concepts of "importation" and "exportation", and as a consequence the one of "contraband", which isnin't anything else than carrying out one or the other, are interpreted in accordance with the international agreements entered into by Mexico, and not the one promulgated in the Treasury (Fiscal) Code of the Federation or the Customs Code. Therefore, this is why we dwell here exclusively with the Sanitary (Health) Code and the Penal Code which both comply with the recommendations made by the Sole (Uniform) Convention on Stupefying Drugs of 1961 (See Article 36 of the Convention).

It should be remembered that the crime of drug trafficking, as well as its variants, falls under the federal realm (jurisdiction). This is accomplished when a matter is covered in a statute of this type, as is the case with the Sanitary (Health) Code and in another dimension in the Penal Code.

It would be pointless to review the various State codes, inasmuch as only the federal law is applicable. Only the penal code of Tabasco and Tlaxcala expressly defer to the federal sphere. Others contain supplementary information, particularly those dealing with adulteration of medicines, as for example in the Code of Chiapa and Tamaulipas. In no case, with the exception of the Penal Code of Coahuila, which recites the federal code almost verbatim, do we find any regulation of illegal drug trafficking.

5.3 Schematic Picture of Crimes and Punishment

We have classified the various crimes comprised under the rubric of drug trafficking into four groups, depending on the maxcimum and minimum penalties. In each instance, we should also remind you of the applicability of Articles 455 and 199 of the Penal Code, regarding the forfeiture of the substances, instruments and vehicles used in the Commission of the crime, and also that conditional suspension of the sentence may only be granted when the minimal sentence is less than two years in prison. Only those crimes in categories 4 and 5 fall into such group.

I. A prison term of 6 years to 15 years and a fine of three thousand to thirty thousand pesos, shall be imposed, without prejudicing any complementary sanctions also imposed, to those who:

A) Illegally import or export drugs (First paragraph of Article 197)

In addition, a fine of one thousand to fifty thousand pesos can be imposed (Article 444 of the Sanitary Code with reference to Articles 293, 294, 298, 300, 306 of the Sanitary Code).

If the person were a pharmacist, hypothecary or druggist, or those who practice medicine, they shall be prevented from working in their trade or profession for two to five years (Part II, Article 196 of the Penal Code).

B) Own or are in charge of an opium smoking den or of an establishment dedicated to the sale, supply or use of drugs within Groups I and II (Articles 197 and 198 of the Penal Code). In addition, a fine of one thousand to fifty thousand pesos may be imposed (Articles 444 of the Sanitary Code, in conformity with Articles 235, 236, 237, 291, 293 and 294 of the Sanitary Code).

The establishment shall, in addition, be permanently closed (Article 198 of the Penal Code).

C) When officials or public customs employees allow the entry or exit of drugs in violation of the Sanitary or international regulations (Article 197, Second Paragraph, Penal Code).

II. A prison term of 4 years to 12 years, without prejudicing any other secondary sanctions which may also be imposed, shall be imposed on those who:

A) Being pharmacists, hypothecaries, druggists, or practicing medicine, carry out any of the acts involving drug traffic - with the exception of those pointed out in IA, that is to say, illicit exportation or importation of the same (Article 196 of the Penal Code).

The Penal Code establishes a fine of three thousand to twenty five thousand pesos (Part I, Article 196 of the Penal Code). The Sanitary Code, meanwhile, allows the imposition of an additional fine ranging from one thousand to fifty thousand pesos (Article 444 of the Sanitary Code, in conformity with Articles 235, 236, 237, 292, 293, 294 and 314 of the Sanitary Code.

In addition, if the act was carried out inside of an establishment, the same shall be closed for a period of time ranging between one and three years (Part III, Article 196 of the Penal Code). Those responsible shall be prevented from excercising their line of work or profession for two to five years (Article 196 of the Penal Code).

B) Induce or assist a minor under the age of 18 to use drugs or to commit any of the other crimes indicated herein; or an incapacitated person or a person who is of age but whom the perpetrator took advantage of because of his position or authority over such person (Next to the last paragraph, Article 195 of the Penal Code.) To any prison term imposed in this case, a fine of two thousand to twenty thousand pesos shall be added (Article 195 of the Penal Code).

This provision represents a problem of interpretation, because it does not seem to follow the theory. Some hold that the incapacity may be physical or mental. While others hold that the incapacity must be physical. The issue is still legally unresolved as to the proper interpretation.

III. A prison term of three to twelve years, a fine of two thousand to twenty thousand pesos (Article 195 of the Penal Code) and another fine of one thousand to fifty thousand pesos (Article 444 of the Sanitary Code, in conformity with Articles 235 to 237, 291, 293 and 294) shall be imposed on those who:

A) Traffic in stupefying drugs without complying with the legal requirements (Part I of Article 195 of the Penal Code).

B) Traffic in seeds or plants which are stupefying (Part II, Article 195).

C) Traffic in crude opium or any other drug within Category I (Part III, article 195, Penal Code), or

D) Commit any act of trafficking, with the exception of the ones listed further on under IVD, in cannabis plants or resins in bulk of such plant, whether in bulk or purified (refined) (Article 194, second paragraph, in conformity with Article 195, Penal Code).

IV. A prison term of three months to twelve years shall be imposed on those who:

A) Import or export any of the psychotrophic substances which fall under Group I (Article 502, Second Paragraph, Sanitary Code): prison term from one year to twelve years and a fine of two thousand to twenty thousand pesos.

B) Traffic in psychotrophic substances, excluding conduct falling into the previous category (i.e., IVA) - prison term of one year to ten years and a fine of two thousand to twenty thousand pesos (Article 502, 1st paragraph, Sanitary Code)

C) Adulterates in any way, stupefying drugs, psychotrophic substances or medicines derived from them, alterating the registered formulae. The penalty shall be of one year to nine years imprisonment and a fine of five thousand to fifty thousand pesos (Article 507, Sanitary Code).

D) Plants, grows, harvests or possesses cannabis plants reputed to be stupefying. The penalty shall be a prison term of two to nine years and a fine of one thousand to ten thousand pesos (Article 194, 1st paragraph, Penal Code)

E) Traffics in any of the psychotrophic substances of Groups II and III without complying with the legal requirements. The penalty shall be a prison term of six months to eight years and a fine of one thousand to twenty thousand pesos (Article 503, Sanitary Code). The fact that Article 327 of the Sanitary Code incorporates the psychotrophic substances in Group II under the rubric of stupefying drugs, allows the application of penalties indicated in Category III.

F) Trades, distributes or sells medicines, stupefying drugs or psychotrophic substances which are adulterated or contaminated, with the knowledge of this fact, shall be punished with a prison term of six months to three years and fined one thousand to ten thousand pesos (Article 608, Sanitary Code)

G) Incites others through propaganda to use stupefying drugs or psychotrophic substances shall be punished with a prison term between three months and two years and a fine of one thousand to twenty five thousand pesos (Article 505, Sanitary Code, in conformity with Article 504).

5.4 Miliary Justice

The provisions and penalties which have up to now been described are applicable without exception to the members of the Mexican armed forces. However, if the crime is committed when the person is in active duty or as a reult of acts while on active duty, he shall be tried by a military court, If either of these two circumstances are not present, then the person shall be tried by the competent jurisdiction, which is in federal court. In either event, both the Sanitary Code and the Federal Penal Code are applicable.

Article 13 of the Constitution establishes military justice (proceedings) to handle crimes and breaches of military discipline. However, it warns that "under no circumstances and for no reason shall they extend their jurisdiction over persons not in the military."

The Code of Military Justice currently in effect (published in The Diario Oficial of August 11, 1941) devotes its Article 57 to crimes against military discipline. The second part of the Article states that crimes which fall under such category include those "of common law or federal crimes, when in their commission, any of the following circumstances were present: they were committed by military personnel while on active duty or as a result of their acts while on active duty." The same article further states that in instances where both military and civilians committed the crimes, the former shall be tried by military courts, while the latter shall be tried by competent ordinary federal courts.

5.5 The criminal proceedings: Terms and Guarantees

A sentence can only be carried out as a result of a verdict after trial. The trial insures the application of the law and to the maximum extent possible, to confirm that the accused did indeed commit the crime.

Two things are always required: impartiality on the part of the judge and the chance given to the accused to defend himself. In addition, there is the need to have an accusatory entity, which offers proof as to the culpability of the accused, a function which is reserved to the Public Ministry.

We shall offer a glimpse at the steps or stages which the proceedings undergo, the guarantees to which the accused is entitled and the prerrogatives granted to the Public Ministry.

It is also the Constitution which grants certain procedural guarantees in Article 14, which states that "no one shall be deprived of life, liberty or of his property, possessions or rights, without a trial held before a court which had been previously established, in which the essential formalities of procedure have been followed, and in accordance with laws enacted prior to the commission of the act."

The central principle of our criminal legal system is that there is no crime nor punishment without a law. The Constitution in the thirds paragraph of Article 14 states that "in criminal trials it is forbidden to impose a penalty by simple analogy or by deductive reasoning, but under a law which is exactly applicable to the crime in question."

Linked to this principle are those contained in Articles 13, 17 and 21 of the Constitution. The first of these, states that no one can be judged by special laws or by special courts." The second prohibits a person from taking justice into his own hands and claim his right through violence. Article 21 states that the imposition of penalties (sanctions) is the proper and exclusive prerrogative of the courts.

These general principles are to be supplemented by other organic and functional provisions which the jurisdiction may determine, by the procedural guarantees to which the accused is entitled and the elements of the accusation. The first are clearly outlined in the Federal Code of Criminal Procedure, whose Article 6 provides that "the competent court to consider a crime is the one located where the crime was committed." It is obvious that if the crime is one of common law, those which handle that category of case would be the competent ones, while federal crimes, such as drug trafficking, shall be handled by a federal court (Part I, Article 104 of the Constitution). If a person commits a crime of both types, he shall be tried separately for each, since they cannot be cumulated in a single one (Article 474, Federal Code of Criminal Procedure).

It is Article 20 of the Constitution which provides the most important procedural guarantee. An accused shall not be obligated to declare against himself, and he shall not be held incomunicado or subject to any measure which would tend to produce testimony against himself (Part II). Within forty eight hours after being held for trial, the accused shall be furnished with the name of the accuser and the nature and type of accusation (Part III). When he confronts his accusers, whether it's he personally or through his defense counsel, he may ask any question conducive to his defense (Part IV), and any witnesses and proof that he may wish to present in his defense shall be accepted (Part V). He shall be furnished with any information he may need for his defense and which is relevant to the case (Part VII) and he shall be heard in his defense, whether personally or through someone in his confidence, as he chooses.

Having a defense counsel is, in turn, a right and an obligation of the accused. If he does not have one, he "shall be presented with the official list of defense counsel so that he may choose therefrom. If the accused does not want to appoint defense counsel, after he has been requested to do so (according to Part 9 of Article 20 of the Constitution) when he gives his preparatory declaration, the judge shall appoint one on his own accord." The possibility of having defense counsel is initiated from the very moment of apprehension and the accused has the right to have him present at each stage of the trial. The accused has the right to have his counsel appear as often as he deems it necessary.

Further on, we shall see the participation of the Public Ministry, in the proceedings and in the prosecution of crime. For now, suffice to say that "no apprehension or detention order can be issued unless it is from a judicial authority, and unless it is preceeded by a denunciation (accusation) or complaint related to a determinate set of facts which the law punishes with imprisonment, and without their being supported by declaration, under oath, of a credible person or corroborated by other facts, which tend to support the culpability of the accused." There are several exceptions to these provisions of Article 16 of the Constitution, namely that the accused be found "in the commission of the crime, in which case, any person may apprehend him, or in cases of extreme urgency, when there is no judicial authority, in which case the narrow responsibility can be conferred to the administrative authorities to detain the accused. In either case, the person detained must be placed immediately at the disposal of the judicial authority.

Preventive detention shall only be decreed in crimes warranting confinement (prison) (Article 18 of the Constitution) and in criminal trials the accused shall be let free on bail "as long as the crime warrants a punishment whose mathematical average is no more than five years in prison and he pays the authorities the corresponding sum of money or provides a mortgage bond (collateral).

The same Article 20, Part I points out that the amount of bail shall be imposed by the judge taking into account the personal circumstances and the seriousness of the crime which the accused allegedly committed. But in no case shall such amount be greater than 250,000 pesos, unless the crime provided the perpetrator with economic gain, as is usually the case in drug dealing on a large scale.

Lastly, there are several constitutional safeguards which must be afforded the accused. As we have already seen, he must be "without delay" placed at the disposal of the competent authority (Article 16). Part XVIII of Article 107 of the Constitution is even more precise: "...whomever, after effectuating an apprehension fails to place the detainer before the judge within the subsequent twenty four hours, shall be turned over to the authorities or their agennt."

Several time spans begin to run upon the accused being placed at the disposal of the competent court. The first is a term of forty eight hours, the maximum time frame granted by our Constitution for the judge, in a public hearing to notify the accused of the name of his accuser and the nature of the accusation so that "he may be aware of the punishable crime whose commission is attributed to him, and so that he may be able to respond to the charges, making in this act his preparatory statement (Part III, Article 20). The second time frame is of three days or 72 hours, after which the detainee cannot be detained further unless it is justified by a "writ of formal imprisonment", during which it shall establish the crime attributed to the detainee, the elements which constitute the same, the circumstances, time and place of the crime, and information obtained from the prior investigation, as Article 19 of the Constitution provides, "must be sufficient to corroborate the corpus of the crime and establish probable cause that the accused was responsible."

The lapse of 72 hours, in fact, can be extended for another 3 hours, when wardens and jailers did not receive a copy of the "writ of formal imprisonment", shall make the judge aware of such circumstance. If they do not receive a reply during the next three hours, they shall set the accused free (Article 107, Part XVIII).

From the moment when the "writ of formal imprisonment" is dictated, the time begins to run with respect to how long the trial can last. If the trial involves crimes whose maximum punishment does not exceed two years in prison, the accused must be sentenced before 4 months. If the maximum punishment exceeds two years, he must be sentenced within one year (Part VIII, Article 20). Article 147 of the Federal Code of Criminal Procedure is even more specific: if the maximum penalty is two years or less, the proceedings must be determined within 3 months. If it is greater than two years, the trial shall be concluded within 10 months. If the punishment does not exceed six months in jail (according to article 152 of the Federal Code of Criminal Procedure), or there is no imprisonment, the inquiry shall be concluded within 15 days. The time frames under the Federal Code of Criminal Procedure shall begin to run from the writ of formal imprisonment.

It should be pointed out that violation of the time frames pointed out by the Constitution is reason for an amparo.

5.6 The Public Ministry

The Public Ministry is a key participant in the proceedings, since it is up to this entity to pursue the criminal cases in court and to prosecute crimes. The institution depends on the Executive Power, be it state or federal.

The Public Ministry has a dual structure, based on whether crimes are common law crimes or federal crimes. Each state as well as the District and federal territories have a state Public Ministry whose function is to serve as the accuser in common law courts. In federal courts, however, it is the Federal Public Ministry which intervenes, under whose charge is "the prosecution before the courts, of all federal crimes, and therefore it shall be charged with requesting the apprehension orders of suspects; to search for and present evidence which corroborates the accused's guilt, insure that trials are held with all regularity so that the administration of justice is fast and expedited; request the penalty to be imposed, and to intervene in all matters which the law requires (Article 102 of the Constitution, Paragraph II).

Since the crimes which interest us are federal in nature, we shall only be concerned with the Federal Public Ministry.

There are two constitutional articles which deal with this institution: Articles 21 and 102. In addition, there is a secondary regulation, the Organic Law of the Federal Public Ministry.

Obviously, the primary purpose of the Public Ministry is to prosecute crime, whether it be during the investigation phase prior to the institution of criminal proceedings, or as the accuser during such proceedings. The Attorney General of the Republic, head of the Public Ministry, is also the legal adviser to the Federal Executive, whether within the Council of Ministers or without, and is charged with judicially representing the interests of the federation in all trials, whether as an active part, the defendant, or a third party (Article 102, Third paragraph, Constitution), and Part IV, First Paragraph, Organic Law of the Federal Public Ministry.

It is also the Public Ministry which is in charge of insuring the legality of the criminal proceedings, seeing that justice is administered in an efficient and proper manner.

In this regard, the Public Ministry must reveal any irregularities incurred by judges or courts (Article 1, Part VII, Organic Law of the Federal Public Ministry). Part of this responsibility is seen in the fact that the Attorney General must attend sessions en banc of the Supreme Court whenever judicial fuctionaries are to be designated, with a right to speak but not to vote (Article 15, Part X, Organic Law of the Federal Public Ministry). It is also the responsibility of the Attorney General to denounce the laws which

are unconstitutional and to promote the necessary legislative reforms so that the Constitutional provisions are strictly observed (Article 15, Parts I and II, Organic Law of the Federal Public Ministry).

Another duty of the Public Ministry is to notify the Attorney General of constitutional violations committed by federal or local authorities (Article I, Part VI, Organic Law of the Federal Public Ministry). Such notification shall have the character of a formal accusation (denunciation).

This same principle is the one that forces the Public Ministry to intervene in every amparo case, unless in its judgement it lacks public interest (Article 107 of the Constitution, Part XV), and a similar reason requires it to participate in the international repression of the drug trade, as for example when it must intervene in cases of extradition at the request of the Ministry of Foreign Relations and in accordance with the law on the matter (Article 15, Part VII, Organic Law of the Federal Public Ministry).

It should also be mentioned that the Attorney General can be named and removed freely by the head of state (Article 102 of the Constitution, 1st. paragraph). This also occurs with officials of the federal Public Ministry, although in this instance the President would do so at the request of the Attorney General.

5.7 Schematic Picture of the proceedings

The court proceedings can be multiple, especially in view of the fact that depending on the case, the amparo recourse may be available, and it can be initiated by the accused or by the Public Ministry. the fact is, that aside from its participation in the investigative phase of the case in which it acts as an authority and for which its actions are not subject to pronouncements of the criminal courts, the Public Ministry is part of the proceedings, the same as the detainee, and may indeed appeal any rulings of the judge.

It would be difficult to outline all of the eventualities which could occur in a cse, but we shall attempt to furnish the picture of a "normal" trial, during which none of the parties invokes amparo.

The federal criminal proceedings are divided into four phases:

1. Prior Investigation, pre-trial phase during which all of the legal background work is performed so that the Public Ministry can resolve whether to initiate the criminal action or not.

2. Institution of Proceedings - Is performed before the courts and involves all of those activities effectuated to determine the existence of the crimes, the circumstances sorrounding their commission, and the responsibility or lack thereof of the accused.

3. Trial - During which the Public Ministry presents its accusation, the accused his defense, and the court evaluates the evidence presented and reaches a verdict and sentence, and

4. Carrying out (Performance) - This phase is initiated from the sentence starts to be carried out and ends when the imposed sanctions are extinguished.

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1. PRIOR INVESTIGATION

The actions which comprise this phase, prior to the case being formally presented to the court, involve the Public Ministry and the Federal Judicial Police, which during this phase is under the command of the former (Article 21, Part I).

There are three methods to get the Public Ministry involved: dnunciation, complaint or flagrance (article 16 of the Constitution). In a certain sense, we should also include the investigative campaigns undertaken by the Attorney General of the Republic, and, in case of drug traffic, as a result it is "flagrance" which occurs with the most frequency.

Any person, and obviously, any authority, which is aware that a crime has been committed which must be pursued by the government, as is the case with these types of cases, is obligated to report it to the Public Ministry (articles 116 and 117 of the Federal Code of Criminal Procedure). Additionally, in the case when a person is found in flagrant commission of the crime, all are obligated to apprehend the criminal and place him immediately at the disposal of the Public Ministry (Article 16 of the Constitution). Such involvement is within reason, as our case law points out, and it excludes acts of heroism or those which represent a danger.

The central purpose of the prior investigation is so that the Public Ministry can gather all of the relevant elements necessary for it to determine whether a criminal action is in order or not. It has the power to effectuate a number of actions, such as to receive documents, testimony, confessions and expert testimony. It can dictate safety and security measures to aid the victims and to take the necessary steps to prevent the loss, destruction or alteration of evidence such as fingerprints or traces of the crime (Articles 168 to 205 of the Federal Code of Criminal Procedure.

Of particular importance is the need to preserve the body, finger prints and instruments of the crime, which our jurisprudence treats as the "totality of objective or external elements which constitute the materiality of the crime described by law."

In the case of possession or drug traffic, our law has a special provision, since the corpus of the crime "shall be proven with a simple demonstration of the material fact that the accused has or had

in his possession...whether kept in a specific place or carrying them with him, even when he abandons them, hides them or keeps them in another place", (Article 178 of the Federal Code of Criminal Procedure). Our Supreme Court in its decisions has added that "in order for possession of drugs to constitute an element of the crime against health, it is not necessary for the person to precisely carry the drug with him; it is sufficient for the stupefying drug to be under his personal control and within his range of accessibility." (Supreme Court, Sexta Epoca, Second Part, No. 114).

The gathering and analysis of all of these elements allows the Public Ministry to decide if the person involved is a drug addict, or on the contrary, if it is a criminal who should be prosecuted (Article 524 of the Federal Code of Criminal Procedure). We shall dwell here only on the latter case.

The investigations of the Public Ministry allow that entity to decide between three possibilities: to proceed, to file the case away or to hold it on reserve. In the first cae, if there is already a detainee, the Public Ministry sends him to preventive detention, where he is placed before the judge's disposal, who shall receive the results of the investigation. If there isin't any, the Public Ministry asks the court to issue an apprehension order, and the actual apprehension is keft up to the federal judicial police (Article 195 and 196 of the Federal Code of Criminal Procedure). When he is finally captured, he shall be placed, as in the other case, before the corresponding court (Article 197, Federal Code of Criminal Procedure).

It is possible that the facts, in the opinion of the Public Ministry, do not constitute a crime, as is the case of mere drug addiction (See Article 195 of the Penal Code), or it may be that it would be impossible to prove, or that the legal action is legally extinguished (statute of limitations?) - Article 137 of the Federal Code of Criminal Procedure, or finally, that the suspect did not participate in the criminal actions. In these cases, the Public Ministry shall send the case to be filed. This decision, once made, prevents a later institution of a penal action based on the facts which gave rise to the investigation (Article 139 of the Federal Code of Criminal Procedure).

There is still another possibility, and that is to place the matter on reserve (Article 18, Part III, Organic Law of the Federal Public Ministry), which allows the matter to be reopened if new probative elements were discovered.

Let us forget momentarily about filing the matter or placing it on reserve and assume that the matter has been referred to the appropriate court. When this is done, the investigation phase is over, and the institution of proceedings begins. We should point out that up to now the Public Ministry has been acting as an authority, and an amparo can be brought against its actions. This does not occur when the courts intervene since the Public Ministry ceases to be an authority and becomes another party in the trial.

2. Institution of Proceedings

This part is initiated with a filing writ, through which the judge indicates that he has the power to entertain the matter before him. If this were decreed, then immediately following comes the apprehension order, which as we have already seen cannot be issued on the court's own accord but only at the request of the Public Ministry, which is not the case with an order for reapprehension, in which case the judge can issue such without it being asked by the Public Ministry.

In order for the proceedings to follow their course, it is necessary for the accused to be placed, one way or another, at the court's disposal. The simplest case, is when the accused has been apprehended by the Public Ministry. Another situation arises when the accused has obtained an amparo order against his apprehension. In these circumstances, it is obvious that the Public Ministry cannot apprehend him, but nothing prevents the judge from issuing an order to compel the accused's appearance before him to make a preparatory declaration (Article 159 of the Federal Code of Criminal Procedure).

In cases when the accused has been detained, the declaration shall be made within 48 hours following the moment when he was placed at the court's disposal. (Article 20 of the Constitution, Part III). During said declaration, which shall have the character of a public hearing and at which only the witnesses who are to be examined on the facts are prevented from attending, the accused shall be informed of the nature and reason for his being accused and he shall be notified whether he may be released on bail or not, after computing the mathematical average penalty of the alleged crime. He is entitled to be free on bail only if such average penalty does not exceed five years in prison (Article 154, Federal Code of Criminal Procedure, and Article 20, Part I of the Constitution).

During such proceedings, the accused's attorney, the accused and the Public Ministry shall appear, and one and the other may question him.The court may disallow questions which, in its opinion, are leading or unconducive (Article 156 of the Federal Code of Criminal Procedure).

Twenty four hours after the preparatory declaration has been made, the judge will issue a writ of formal imprisonment or a writ of freedom due to lack of elements upon which to proceed. In the latter case, nothing prevents proceeding against the accused at a later date based on new evidence. (Article 167 of the Federal Code of Criminal Procedure). The writ of formal imprisonment ackowledges the existence of the corpus of the crime which warrants imprisonment, it points out that there are no exculpating factors or any that serve to extinguish the criminal action and fixes the matter for trial. It also establises probable cause that the accused committed the crime.

The writ of formal imprisonment, on the other hand, justifies preventive detention, serves as point of departure to compute the time frames within which the trial is constitutionally supposed to last, and suspends the citizen rights of the accused, in conformity with article 38, Part III of the Constitution.

If the proceedings run their normal course, the next stage is one of inquiry during which the court attempts to get to know the personal circumstances of the accused, his habits and prior conduct; his age and education, the reasons which motivated him to commit the crime; his economic circumstances; his bonds of friendship and family, in short, anything which helps to determine if he is dangerous (Article 146 of the Federal Code of Criminal Procedure).

Following that phase comes another during which the Public Ministry presents its case during a three day period, and then the accused and his defense counsel do the same. Both are allowed fifteen days to present the evidence they deem pertinent (Article 150 of the Federal Code of Criminal Procedure). Once that period of time has gone by or has been waived, the court of its own shall declare the inquiry phase over, which theoretically prevents the presentation of further evidence. But there are some exceptions to this, such as proof involving confession (Article 207. Federal Code of Criminal Procedure), reconstruction of the facts (Article 214 of the Code of Criminal Procedure), public instruments (entities?) (Article 380, Federal Code of Criminal Procedure), the evidentiary formalities (Article 306 of the Federal Code of Criminal Procedure), and even the examination of witnesses and experts (Article 323 of the Federal Code of Criminal Procedure).

If these exceptions do not occur, or after they have all been exhausted, the inquiry stage is over, and the proceedings turn from persecution to accusation, thus initiating the final phase of the proceedings, which is the true trial part.

It should be pointed out that at any length during this phase of the proceedings, the accused may secure his liberty if the facts which were used to prove the corpus of the crime are dispelled, or if new evidence appears rebutting the basis upon which the writ of formal imprisonment was based, and which had implicated the accused. (Article 422 of the Federal Code of Criminal Procedure). This eventuality is aired in a hearing for such purposes (Article 423 of the Federal Code of Criminal Procedure), and it is called at the request of the Public Ministry (Article 424, Federal Code of Criminal Procedure), which does not imply that it is desisting from its legal action, nor does it prevent it, should new elements show up, to reapprehend the accused and reinitiate the proceedings. (Article 426, Federal Code of Criminal Procedure).

3. Trial

The third stage of the federal criminal proceedings is the trial stage, which begins with the closure of the inquiry (Article 291 of the Federal Code of Criminal Procedure). Once initiated, the

initiative in the proceedings falls upon the Public Ministry, who has five days (which shall be increased one additional day for every fifty sheets after the first two hundred), so that he formulates the conclusions. In these, the Public Ministry shall summarize the facts and the characteristics of the accused; he shall cite laws, decisions or doctrines (Article 293, Federal Code of Criminal Procedure), and shall present, in correct manner, the punishable acts which it attributes to the accused and shall request the corresponding penalties (Article 293, Federal Code of Criminal Procedure).

The Public Ministry, nevertheless, is an institution which acts in good faith, and therefore its conclusions need not be necessarily accusatory. If this were the case, the law provides that the court shall send them to the Attorney General of the Republic, so that he confirms, revokes or modifies them within a time frame of fifteen days (Article 295, Federal Code of Criminal Procedure). This is also to occur if the conclusions submitted by the Public Ministry do not include a crime which had been proven in the inquiry; if they are contrary to the record of the proceedings, or if they fail to comply with the requirements established for such.

Once the Public Ministry or the Attorney General, have formulated their conclusions, the record shall be opened to the accused and his defense attorney so that they, within the same time frame, respond in writing to the accusation and formulate the conclusions which they deem to be in order (Article 296, Federal Code of Criminal Procedure). If they have not submitted them after the time allotted, the court shall deem them to have formulated the ones related to innocence (Article 297, Federal Code of Criminal Procedure).

In the presence of the parties, there is a final hearing which is celebrated, during which the evidence presented is reviewed, the proof and claims of both are also reviewed as well as the conclusions reached. (Article 306, Federal Code of Criminal Procedure). Fifteen days after this hearing (plus an extra day for each 50 pages of the record which exceed 500), the court shall reach its verdict. (Article 97, Federal Code of Criminal Procedure), be it to condemn or to absolve. The same shall indicate the place it was issued, the court which issued it, general information on the accused, a summary of the facts, the considerations and legal foundation, and the decision on his guilt or innocence (Article 95). Five days later, if it has not been attacked or if no clarification has been requested, it shall be considered as final (Article 368).

The clarification (see Articles 351 to 359, FCCP), seeks to have any contradiction, ambiguity, obscurity or deficiency in the decision clarified. This can only be requested once, and so doing tolls the time frame for filing an appeal.

4. Carrying Out (Performance)

This is the final portion of the proceedings, and as in the first stage, the courts do not intervene, since it is the duty of the federal executive to carry out the sentence imposed (Article 77 of

the Penal Code and 529 of the Federal Code of Criminal Procedure). Article 2, Part XXV of the Law of Ministries and Departments of the State, provides that the administration of jails, prisons, and penitentiaries, whether in the Districts or federal territories, as well as in the States of the Union, shall correspond to the Secretary of Governance. This is accomplished through the General Directorship of Coordinated Services for Prevention and Social Rehabilitation.

In this phase, the Public Ministry also intervenes, since it must insure that the judicial sentences are carried out (Article 5 of the Federal Code of Criminal Procedure). It is empowered to attend the jail hearings, intervene in executive affairs, such as preparatory liberty (parole?), in rehabilitation matters and in others it deems. It may deal with the administrative agencies or seek the repression of abuses through the courts. It sees that the administrative authorities comply with the terms of the sentence, and they shall act on behalf or against the interests of the sentenced person.